

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHRISTINE CLAYTON,

Plaintiff,

vs.

No. CIV 09-0188 JB/ACT

VANGUARD CAR RENTAL U.S.A., INC.,

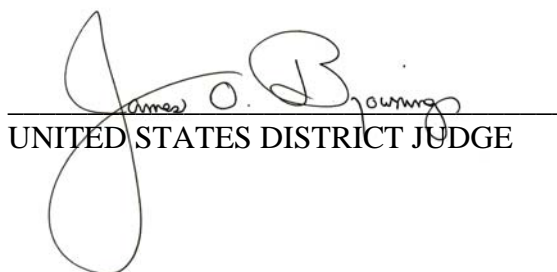
Defendant.

ORDER

THIS MATTER comes before the Court on Plaintiff's Motion to Compel Defendant to Respond to Plaintiff's Fifth Request for Production, filed October 13, 2009 (Doc. 63). The Court held a hearing on November 18, 2009. The primary issue is whether the Court should compel Defendant Vanguard Car Rental U.S.A., Inc. to produce documents that fall within gaps in the Bates-numbered production that Vanguard has already produced to Plaintiff Christine Clayton. For the reasons stated at the hearing and for other reasons consistent with those already stated, the Court will not compel Vanguard to produce documents only because they fall within a Bates-numbering gap. The Court finds that simply having a gap in Bates-numbering does not indicate, without more, that the documents in the gap need to be scheduled or produced. The Court finds it reasonable to assume a situation in which a paralegal has Bates-stamped a box of documents, and then, upon attorney-review of those documents, it is determined that a portion are not responsive to a request and are removed from the production, thus creating a gap in the numbering. The Court, thus, will not draw any inference from the existence of a gap in the Bates-numbering. On the other hand, if documents within the Bates-numbered gap range are being withheld for any reason other than responsiveness, those documents need to be scheduled or produced. The Court, therefore, will

require Vanguard to ensure that the documents within the Bates-range that have not been produced to Clayton are not relevant or otherwise responsive within the scope of any specific discovery requests that Clayton has made. Vanguard must also ensure that the documents in the Bates-range-gap do not fall within the scope of required initial disclosures that the parties must make pursuant to the Local Rules.

IT IS ORDERED that Plaintiff's Motion to Compel Defendant to Respond to Plaintiff's Fifth Request for Production is granted in part and denied in part as set forth in this opinion.



UNITED STATES DISTRICT JUDGE

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